

1 Bill No. G-85-03-01

(submitted)

2 GENERAL ORDINANCE NO.

08-85

3 AN ORDINANCE amending Chapter 33 of the
4 Municipal Code of the City of Fort Wayne,
Indiana.

5 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
6 WAYNE, INDIANA:

7 SECTION 1. Article X, Section 33-41 to Section 33-52
8 are repealed and the following is hereby enacted.

9 SECTION 2. That this Ordinance shall be in full force
10 and effect from and after its passage and approval by the Mayor.

11 **ARTICLE X - FLOOD PLAIN DISTRICT**

12 **Section 33-41. GENERAL CRITERIA FOR FLOOD PLAIN REGULATIONS**

13
14
15 A. Objectives - The objective of this article is to provide
16 sound flood plain regulation for Fort Wayne's rivers and
17 streams in order better to:

18
19 1. Protect human life and health.

20
21 2. Protect individuals from buying lands and structures
22 which are unsuited for intended purposes because of
23 flood hazards.

24
25 3. Provide for public awareness of the flooding poten-
26 tial.

27
28 4. Minimize public and private property damage.

29
30 5. Minimize surface and groundwater pollution which will
31 affect human, animal, or plant life.

6. Control flood plain uses such as filling, dumping, storage of material, structures, buildings, and any other which, acting alone or in combination with other existing or future uses, cause damaging flood heights and velocities by obstructing flows and reducing water storage capacity.
7. Control development which will, when acting alone or in combination with other development or features, cause an unjustified vulnerability to floods, flood damage, and an additional burden to the public to pay the costs of rescue, relief, emergency preparedness measures, sandbagging, pumping, and temporary dikes or levees.
8. Control development which will, when acting alone or in combination with other development or features, cause an additional burden to the public for business interruptions, factory closings, disruption of transportation routes, interference with utility services, and other factors that result in loss of wages, sales, production, and tax write-offs.
9. Help maintain a stable tax base by the preservation or enhancement of property values for future flood plain development.
10. Minimize areas of the flood plain that are blighted by floods so that property values in and adjacent to the flood plain will be preserved.

- 1 11. Maximize the use of flood plains for parks, open spaces,
2 and public recreation purposes.
3
4

5 **Section 33-42. DEFINITIONS**
6

7 Whenever used or referred to in this ordinance unless a different
8 meaning appears from the context.
9

10 A. Development - any man-made change to improved or unimproved
11 real estate, including but not limited to, buildings or
12 other structures, mining, dredging, filling, grading, paving,
13 excavation, substantial improvements, placement of mobile
14 homes, subdivision of land, in-fill, or drilling operations.
15

16 B. Flood or Floodwater - the water of any river, stream or
17 lake which is above the bank and/or outside the channel
18 and banks of such river, stream, or lake.
19

20 C. Flood Plain - the area adjoining a river, stream, or lake
21 which has been or may hereafter be covered by floodwater
22 and consists of all floodway, floodway fringe unprotected,
23 and floodway fringe protected areas that are subject to
24 flooding by the regulatory flood. This area is shown as
25 unnumbered A-Zones on the Flood Insurance Rate Maps.
26

27 D. Flood-Proofing - a combination of structural provisions,
28 changes, or adjustments to properties and structures subject
29 to flood primarily for the reduction or elimination of
30 flood damages to properties, water and sanitary facilities,
31 structures, and contents of buildings in a flood plain.
32

1 Flood proofing must be water tight below the regulatory
2 flood elevation.

3
4 E. Flood-Proofed Building - a commercial or industrial building
5 designed to exclude floodwater from the interior of that
6 building. All such flood-proofing shall be adequate to
7 withstand the flood depths, pressures, velocities, impact
8 and uplift forces and other factors associated with the
9 regulatory flood.

10
11 F. Flood Protection Grade - (i) nonflood-proofed buildings:
12 the elevation of the lowest floor of a building or struc-
13 ture. If a building contains a basement, the basement
14 floor is considered the lowest floor. (ii) flood-proofed
15 building: if a building is flood-proofed as hereinafter
16 defined, the term "flood protection grade" applies to the
17 water surface elevation for which the building is protected.

18
19 G. Floodway Area (FW) - The channel of a river or stream and
20 those portions of the flood plain adjoining the channel
21 that are determined by the Indiana Department of Natural
22 Resources and FEMA as necessary to carry and discharge
23 the regulatory flood of any channel, water course or flood
24 plain.

25
26 H. Floodway Fringe (FF) - means those portions of the flood
27 plain lying outside the floodway area.

28
29 I. Floodway Fringe Unprotected Area (FFU) - That portion of
30 the flood plain lying outside of the floodway which is
31 not included in the Floodway Fringe Protected Area. (This
32

definition only applies to Section 33.46)

J. Floodway Fringe Protected Area (FFP) - That portion of the flood plain lying outside of the floodway and determined by the City Department charged with floodwater control to be reasonably protected from floodwaters so that the chances of flooding are minimized. The Floodway Fringe Protected areas shall be approved by the Indiana Department of Natural Resources and will be shown on an overlay district map maintained by the City. (This definition only applies to Section 33.46)

K. In-fill - new construction or substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the regulatory flood elevation.

L. Obstruction - structure, object or other matter in, along, across, or projecting into any channel, water course or flood plain river or stream, or flood hazard area which may impede, retard, or change the direction of the flow of water.

M. Regulatory Flood - a flood having a peak discharge which can be expected to be equalled or exceeded on the average of once in a 100-year period, as calculated by a method and procedure which is acceptable to and provided by the Indiana Department of Natural Resources. The regulatory flood has a 1 percent probability of occurring in any given year.

N. Regulatory Flood Profile - a longitudinal profile along

1 the thread of a stream showing the maximum water surface
2 elevations attained by the regulatory flood.

3
4 O. Regulatory Floodway - the channel of a river or stream
5 and those portions of the flood plain adjoining the channel
6 which are required to carry and discharge the peak flow
7 of the regulatory flood of any channel or watercourse with
8 no increase in the regulatory flood elevation.

9
10 P. River or Stream - all open channels, whether natural, man-made,
11 or modified by man, which carry or discharge water.

12
13 Q. Structure - walled and roofed buildings, including gas
14 or liquid storage tanks, and mobile homes that are princi-
15 pally above ground.

16
17 **Section 33-43. FLOOD PLAIN DISTRICT BOUNDARIES**
18

19
20 The areal extent of the flood plain area shall include all land
21 subject to inundation by the regulatory flood as shown on maps
22 prepared by the Federal Emergency Management Agency in a scien-
23 tific and engineering report entitled "The Flood Insurance Study
24 for the City of Fort Wayne, Indiana" dated October 3, 1984,
25 with accompanying Flood Boundary-Floodway Maps and Flood Insur-
26 ance Rate Map dated April 3, 1985, along with any subsequent
27 revisions to text or maps. In cases where the floodway, floodway
28 fringe, peak discharge and regulatory^{flood} profile have not been
29 provided by the Federal Emergency Management Agency, this data
30 shall be determined and approved by the Indiana Department of
31 Natural Resources utilizing the best available technology. In

1 addition to the Flood Insurance Study Maps, any maps prepared
2 or supplied by the Department of Natural Resources which allow
3 for a better flood plain delineation shall be used by the Zoning
4 Enforcement Officer provided that these maps shall be at least
5 as restrictive as the FIS maps. Amendments to the text of Flood
6 Plain District and FIS maps can be made provided that no change
7 will be made in the delineation of flood plain, floodway, or
8 regulatory flood elevation and the text of Flood Plain District
9 without the prior approval of FEMA.

10
11
12 **Section 33-44. PROCEDURES FOR DEVELOPMENT**
13 **IN FLOOD PLAIN DISTRICTS**
14

15 A. No development in the Flood Plain Districts shall take
16 place unless the Zoning Enforcement Officer first grants
17 an Improvement Location Permit. The Zoning Enforcement
18 Officer shall review all applications for Improvement Location
19 Permits for development including new construction, addi-
20 tions to existing construction, or other development to
21 ascertain whether the proposed development lies in the
22 Flood Plain District. If the Permit Application pertains
23 to property in the Flood Plain District, then the applicant
24 must meet the following criteria before receiving an Improvement
25 Location Permit and Certificate of Occupancy.

26
27 B. In the enforcement of this article and in granting permits
28 and certificates, the Division of Community Development
29 and Planning shall assure that all of the standards con-
30 tained in 44 CFR, Section 60.3 Subsection (d) and Indiana
31 Department of Natural Resources requirements pertaining
32

1 to state and federal permits, building permit review, sub-
2 division review, flood-proofing nonresidential structures,
3 mobile home tie down standards, utility construction, record
4 keeping (including lowest floor elevation) and stream and
5 river alteration and maintenance have been met.

6
7 1. Record Keeping - For every permit issued in the flood
8 plain, record shall be kept of the ~~regulatory~~ flood elevation
9 at that location, and the elevation of the lowest
10 floor of the structure as designed and built.

11
12 2. Record Keeping for Nonresidential Building - The developer
13 shall provide as part of an application for an Improvement
14 Location Permit a certificate from a registered profes-
15 sional engineer or architect who shall certify that
16 the flood-proofing methods are adequate to withstand
17 the flood depths, pressures, velocities, impact and
18 uplift forces and other factors associated with the
19 regulatory flood. A record of such certificates indicating
20 the specific elevation (in relation to mean sea level)
21 to which such structures are floodproofed shall be
22 maintained with the Division of Community Develop-
23 ment and Planning and recorded at the applicants expense
24 in the County Records Office.

25
26 C. Procedures for development within the floodway

27
28 1. There will be no development of any kind that will
29 increase the regulatory flood elevation including
30 any structure, mobile home, fill, deposit or obstruc-
31 tion within those portions of the floodway which are

1 currently undeveloped, except necessary public utili-
2 ties, construction for flood control purposes, and
3 for the use of parks, open spaces, and public recrea-
4 tion.

5
6 2. If an application for an Improvement Location Permit
7 lies in an identified floodway, then the Zoning Enforcement
8 Officer shall deny the permit, except that applications
9 for parks, open spaces, public recreation, necessary
10 public utilities, devices for flood control purposes,
11 enlargement, expansion or alteration or nonconforming
12 use and rebuilding of any structure damaged by flood,
13 fire, explosion, act of God, or the public enemy shall
14 be forwarded to the Board of Zoning Appeals for a
15 variance in accordance with the procedures set forth
16 in Sections 33-45 and 33-46.

17
18 3. Expansions of legal nonconforming uses shall be permitted
19 only as provided in Section 33-45.

20
21 4. No new structures and enlargements or expansion of
22 legal nonconforming use shall be permitted within
23 the floodway areas.

24
25 D. Procedures for development within the floodway fringe:

26
27 1. For residential structures the lowest floor including
28 the basement must be at least two (2) feet above the
29 regulatory flood elevation.

30 2. For nonresidential structures the lowest floor includ-
31 ing the basement must be at least two (2) feet above

the regulatory flood elevation or adequate flood-proofing techniques must be used to that elevation.

3. All structures to be erected or expanded in the floodway fringe shall have a low flooddamage potential.

4. The structure or structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters.

(i) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of the flow of floodwaters.

(ii) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

5. Structures shall be firmly anchored to prevent flotation which may result in damage to other structures, restriction of bridge openings, and blockage of other narrow sections of the stream or river.

6. Utility equipment such as electrical and heating equipment shall be constructed at least two (2) feet above the regulatory flood elevation for the particular area, unless the building is flood-proofed.

7. New water, sewer, or septic systems shall be designed to minimize infiltration of flood waters.

1
2 E. Storage of material and equipment in the Floodway Fringe
3 shall be governed by the following:

4
5 1. The storing or processing of materials that are in
6 time of flooding buoyant, flammable, explosive, or
7
8 could be injurious to human, animal, or plant life
9 is prohibited.

10
11 2. Storage of other material or equipment may be allowed
12 if not subject to major damage by floods and if firmly
13 anchored to prevent flotation.

14
15 F. Fill and In-fill: Fill and In-fill will be permitted
16 only in the floodway fringe areas and
17 only in accordance with the following
18 procedures:

19
20 1. For any fill and in-fill proposed to be deposited
21 in the floodway fringe, it must be shown that the
22 advantages outweigh the detriment caused by the fill
23 and in-fill and to be of some beneficial purpose.
24 The amount of the fill and in-fill shall not be greater
25 than is shown on a plan submitted by the owner showing
26 the uses to which the filled land will be put and
27 the final dimensions of the proposed fill. All fill
28 and in-fill placed within the floodway fringe shall
29 be obtained from other areas within the flood plain.
30 The location within the flood plain from which the
31 fill is taken shall be graded and seeded to prevent
32

erosion and sedimentation.

2. Such fill or other material shall be protected against erosion by riprap, vegetation cover, or bulkheading.

G. The Director of the Division of Community Department and Planning or his/her representative, may attach such conditions in the granting of Improvement Location Permits and Certificate of Occupancy Permits as it deems necessary to further the purpose of this article. Any decision of the Director of the Division of Community Development and Planning or his/her representative, may be appealed to the Board of Zoning Appeals.

Section 33-45. NONCONFORMING USES

A. All land uses existing at the time of adoption of this article in flood plain areas not in full compliance with this article shall be considered nonconforming uses.

B. Except for normal repair and maintenance, there shall be no enlargement or expansion of a building which constitutes a legal nonconforming use within the floodway area.

C. Except for normal repair and maintenance, any structure which constitutes a legal nonconforming use within the floodway fringe may be altered, enlarged, or extended, on a one-time basis at the existing grade and floor elevations provided that other requirements of Section 33-44 are met, and such alterations, enlargements or extensions

1 do not increase the value of the structure, excluding the
2 value of the land, by more than forty percent (40%) of
3 its pre-improvement market value. If the enlargement, extension
4 or alteration is greater than 40% of its pre-improvement
5 market value, it is permitted as long as the alterations,
6 enlargements or extensions are permanently changed to a
7 conforming use as to the grade and floor elevations and
8 other requirements in accordance with the procedures for
9 development in Section 33-44.

10
11 D. Any structure which constitutes a legal nonconforming use
12 which is damaged by flood, fire, explosion, act of God,
13 the public enemy, other disaster or accident, may be restored
14 to its original dimensions and condition at the existing
15 grade and flood elevations, provided the damage has not
16 reduced the value of the building, excluding the value
17 of the land, by more than forty percent (40%) of its pre-damaged
18 market value. If the structure is damaged more than forty
19 percent (40%) of its pre-damaged market value, then the
20 structure can be reconstructed or repaired only if permanently
21 changed to a conforming use as to the grade and floor elevations
22 and other requirements in accordance with the procedures
23 for development in Section 33-44.

24
25 E. Any repairs, alterations, enlargements, or extensions of
26 any existing legal nonconforming use which use does not
27 involve a structure, is subject to the provisions of this
28 article.
29
30
31
32

Section 33-46. VARIANCES

A. If this article prohibits a proposed development in a flood plain area, a person seeking such use or development may apply to the Board of Zoning Appeals for a variance from the provisions of this article, except for a new development and expansion or enlargement of legal nonconforming use in the floodway. Prior to the Board of Zoning Appeals consideration of the variance request for a variance in the floodway, the application for the variance shall be forwarded to the Indiana Department of Natural Resources for review and comment. All terms and conditions imposed or recommended by the Indiana Department of Natural Resources shall be incorporated into the issuance of any variance and subsequent permit.

B. In determining whether to grant a variance, the Board of Zoning Appeals shall consider the following matters along with the other provisions of this article:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
2. The danger that materials may be swept on to other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions as affected by the variance.

4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flood for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the Comprehensive Plan and flood plain management program for the area.
10. The safety of access to the property in time of flood for ordinary and emergency vehicles.
11. The projected height, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
12. The structure on which reconstruction, rehabilitation or restoration is proposed is listed on the National Register of Historic Places, or State, or Local Inventory

1 of Historic Places.

2
3 13. Whether the subject property is located in the Floodway
4 Fringe Protected or Unprotected Area.

5
6 14. That the proposed development is in-fill development.

7
8 15. That the proposed development is for reconstruction
9 and addition to an existing structure.

10
11 16. The requested variance is for improvements to struc-
12 tures that are designed to comply with cited State
13 health and unsafe building conditions.

14
15 C. The Board of Zoning Appeals may grant such variances only
16 where the following conditions are met:

17
18 1. In all cases a public hearing will be held as provided
19 in Chapter 33 with required statutory notice provided.

20
21 2. In an in-fill situation, the structure or use is located
22 on a lot one-half acre or less in size and is contiguous
23 to and surrounded by lots with existing structures con-
24 structed below the regulatory flood elevation.

25
26 3. The variance must not be contrary to the public interest,
27 where owing to special conditions a literal enforcement
28 of the provisions of this article will result in unneces-
29 sary hardship including extreme hardship to the property
30 owner, and so that the spirit of this article shall
31 be observed and substantial justice done.

1 4. All possible efforts are made to minimize potential
2 flood damages.

3
4 5. The variance must be designed so as to cause the least
5 amount of potential damage considering the factors
6 set forth in Section 33.46B.

7
8 6. The Board will require in each case a written waiver
9 of liability (as more fully set forth in Section 33-47)
10 from the owners and developers if the developers are
11 different from the owners.

12
13 7. If the proposed development is in Floodway, it must
14 be shown that this will not result in an increased
15 flood elevation.

16
17 D. If the Board grants a variance according to the above,
18 it must give notice to the applicant. This written notice
19 shall include:

20
21 1. The fact that the proposed structure will be located
22 in a flood plain area.

23
24 2. The Regulatory Flood Profile elevation and the number
25 of feet that the lowest floor of the proposed structure
26 will be below that regulatory flood profile elevation.

27
28 3. The fact that the flood insurance rates will be greatly
29 increased commensurate with the distance below the
30 regulatory flood profile elevation.

1 This notice shall be recorded by the property owner in the Office
2 of the County Recorder and attached to the building permit and
3 displayed with it.

4
5
6
7 **Section 33-47. WARNING AND DISCLAIMER OF LIABILITY**
8

9 The degree of flood protection required by this article is considered
10 reasonable for regulatory purposes and is based on engineering
11 and scientific consideration. Larger floods can and will occur
12 on rare occasions. Flood heights may be increased by man-made
13 or natural causes, such as ice or debris jams. This article
14 does not imply that areas outside the Flood Plain District as
15 defined herein, will be free from flooding or flood damages.
16 This article does not create liability on the part of the State
17 of Indiana, the Indiana Department of Natural Resources, the
18 Board of Zoning Appeals, the Plan Commission of the City of
19 Fort Wayne, or any elected or appointed official or employee
20 thereof for any flood damages that result from reliance on this
21 article or any administrative decision lawfully made thereunder. No
22 Improvement Location Permit nor Certificate of Occupancy shall
23 be granted for any development or any other kind of work in
24 an area covered by this article unless the applicant first executes
25 a document upon forms provided by the City holding the City
26 and State harmless and waiving the City's and State's liability
27 for any flood damage.

28
29 **Section 33-48. ENFORCEMENT**
30

31 A. It shall be the duty of the Zoning Enforcement Officer
32

1 to enforce the provisions of this article in accordance
2 with the powers provided by this article, all other pro-
3 visions of this article, and in accordance with the laws
4 of the State of Indiana.

- 5
6 B. All departments, officials and employees of the City which
7 are vested with the duty of authority to issue permits
8 or licenses shall conform to the provisions of this article
9 and shall issue no permit or license for any use, building
10 or purpose if the same would be in conflict with the provisions
11 of this article.

12
13 **Section 33-49. PENALTIES**
14

- 15
16 A. Any person, whether as principal, agent, owner, lessee,
17 tenant, contractor, builder, architect, engineer or other-
18 wise who violates any provision of this article shall be
19 guilty of a misdemeanor and upon conviction shall be punished
20 by a fine of not less than ten dollars nor more than three
21 hundred dollars for each offense. Each day of the existence
22 of any violation of this article shall be a separate offense.
- 23 B. The erection, construction, enlargement, conversion, moving
24 or maintenance of any building or structure and the use
25 of any land contrary to the provisions of this article
26 is hereby declared to be a nuisance and in violation of
27 this article and unlawful. The Plan Commission, by its
28 Zoning Enforcement Officer, may institute a suit for injunction
29 in the Circuit Court or any Superior Court of the County
30 to restrain any person or governmental unit from violating
31 any provision of this article and to cause such violation

1 to be prevented, abated or removed. Such action may also
2 be instituted by any property owner who is or may
3 be damaged by the violation of any provision of this
4 article.

5
6 C. The remedies provided for in this section shall be cumu-
7 lative and not exclusive and shall be addition to any other
8 remedies provided by law.

9
10
11 **Section 33-50. SEVERABILITY**

12
13 If any section, clause, provision, or portion of this Article is
14 adjudged unconstitutional or invalid by a court of competent jur-
15 isdiction, the remainder of this Article shall not be affected
16 thereby.

17
18 _____
COUNCILMEMBER

19
20 APPROVED AS TO FORM AND LEGALITY:

21
22
23 BRUCE O. BOXBERGER, CITY ATTORNEY

1 to be prevented, abated or removed. Such action may also
2 be instituted by any property owner who is or may
3 be damaged by the violation of any provision of this
4 article.

5
6 C. The remedies provided for in this section shall be cumu-
7 lative and not exclusive and shall be addition to any other
8 remedies provided by law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Section 33-50. SEVERABILITY

If any section, clause, provision, or portion of this Article is
adjudged unconstitutional or invalid by a court of competent jur-
isdiction, the remainder of this Article shall not be affected
thereby.


COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:


BRUCE O. BOXBERGER, CITY ATTORNEY

Read the first time in full and on motion by Redd,
seconded by Eisbart, and duly adopted, read the second time
by title and referred to the Committee (and the City
Plan Commission for recommendation) ~~and Public Hearing to be held after~~
~~due legal notice, at the Council Chambers, City County Building, Fort Wayne~~
Indiana, on 3-11-85, the 11 day of March,
1985, at 9 o'clock A.M., E.S.T.

DATE: 3-11-85

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Redd,
seconded by Stier, and duly adopted, placed on its
passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>			
<u>BRADBURY</u>	<u>✓</u>				
<u>BURNS</u>	<u>✓</u>				
<u>EISBART</u>	<u>✓</u>				
<u>GIAQUINTA</u>	<u>✓</u>				
<u>HENRY</u>	<u>✓</u>				
<u>REDD</u>	<u>✓</u>				
<u>SCHMIDT</u>	<u>✓</u>				
<u>STIER</u>	<u>✓</u>				
<u>TALARICO</u>	<u>✓</u>				

DATE: 3-30-85

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort
Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)
(SPECIAL) (ZONING MAP) ORDINANCE (RESOLUTION) NO. 2-08-85
on the 30th day of March, 1985,

ATTEST:

(SEAL)

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Mark E. GiaQuinta
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana,
on the 30th day of March, 1985,
at the hour of 8:00 o'clock A.M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 30th day of March,
1985, at the hour of 9:00 o'clock A.M., E.S.T.

Win Moses, Jr.
WIN MOSES, JR., MAYOR

AN ORDINANCE amending Chapter 33 of the
Municipal Code of the City of Fort Wayne,
Indiana.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

SECTION 1. Article X, Section 33-41 to Section 33-52
are repealed and the following is hereby enacted.

SECTION 2. That this Ordinance shall be in full force
and effect from and after its passage and approval by the Mayor.

ARTICLE X - FLOOD PLAIN DISTRICT

Section 33-41. GENERAL CRITERIA FOR FLOOD PLAIN REGULATIONS

A. Objectives - The objective of this article is to provide
sound flood plain regulation for Fort Wayne's rivers and
streams in order better to:

1. Protect human life and health.
2. Protect individuals from buying lands and structures
which are unsuited for intended purposes because of
flood hazards.
3. Provide for public awareness of the flooding poten-
tial.
4. Minimize public and private property damage.
5. Minimize surface and groundwater pollution which will
affect human, animal, or plant life.

6. Control flood plain uses such as filling, dumping, storage of material, structures, buildings, and any other which, acting alone or in combination with other existing or future uses, might cause damaging flood heights and velocities by obstructing flows and reducing water storage capacity.
7. Control development which will, when acting alone or in combination with other development or features, create an unjustified vulnerability to floods, flood damage, and an additional burden to the public to pay the costs of rescue, relief, emergency preparedness measures, sandbagging, pumping, and temporary dikes or levees.
8. Control development which will, when acting alone or in combination with other development or features, create an additional burden to the public for business interruptions, factory closings, disruption of transportation routes, interference with utility services, and other factors that result in loss of wages, sales, production, and tax write-offs.
9. Help maintain a stable tax base by the preservation or enhancement of property values for future flood plain development.
10. Minimize areas of the flood plain that are blighted by floods so that property values in and adjacent to the flood plain will be preserved.

- 1 11. Maximize the use of flood plains for parks, open spaces,
2 and public recreation purposes.

3
4
5 **Section 33-42. DEFINITIONS**

6
7 Whenever used or referred to in this ordinance unless a different
8 meaning appears from the context.

- 9
10 A. Development - any man-made change to improved or unimproved
11 real estate, including but not limited to, buildings or
12 other structures, mining, dredging, filling, grading, paving,
13 excavation, or drilling operations.
14
15 B. Flood or Floodwater - the water of any river, stream or
16 lake which is above the bank and/or outside the channel
17 and banks of such river, stream, or lake.
18
19 C. Flood Plain - the area adjoining a river, stream, or lake
20 which has been or may hereafter be covered by floodwater
21 and consists of all floodway, floodway fringe unprotected,
22 and floodway fringe protected areas that are subject to
23 flooding by the regulatory flood. This area is shown as
24 unnumbered A-Zones on the Federal Insurance Rate Maps.
25
26 D. Flood-Proofing - a combination of structural provisions,
27 changes, or adjustments to properties and structures subject
28 to flood primarily for the reduction or elimination of
29 flood damages to properties, water and sanitary facilities,
30 structures, and contents of buildings in a flood plain.

1 E. Flood-Proofed Building - a commercial or industrial building
2 designed to exclude floodwater from the interior of that
3 building. All such flood-proofing shall be adequate to
4 withstand the flood depths, pressures, velocities, impact
5 and uplift forces and other factors associated with the
6 regulatory flood.

7
8 F. Flood Protection Grade - (i) nonflood-proofed buildings:
9 the elevation of the lowest floor of a building or struc-
10 ture. If a building contains a basement, the basement
11 floor is considered the lowest floor. (ii) flood-proofed
12 building: if a building is flood-proofed as hereinafter
13 defined, the term "flood protection grade" applies to the
14 water surface elevation for which the building is protected.

15
16 G. Floodway Area (FW) - The channel of a river or stream and
17 those portions of the flood plain adjoining the channel
18 that are determined by the Indiana Department of Natural
19 Resources and FEMA as necessary to carry and discharge
20 the regulatory flood of any channel, water course or flood
21 plain.

22
23 H. Floodway Fringe (FF) - means those portions of the flood
24 plain lying outside the floodway area.

25
26 I. Floodway Fringe Unprotected Area (FFU) - That portion of
27 the flood plain lying outside of the floodway which is
28 not included in the Floodway Fringe Protected Area.

29
30 J. Floodway Fringe Protected Area (FFP) - That portion of
31 the flood plain lying outside of the floodway and determined
32

1 by the City Department charged with floodwater control
2 to be reasonably protected from floodwaters so that the
3 chances of flooding are minimized. The Floodway Fringe
4 Protected areas shall be approved by the Indiana Department
5 of Natural Resources and will be shown on an overlay district
6 map maintained by the City.

7
8 K. In-fill - new construction or substantial improvements
9 to be erected on a lot of one-half acre or less in size
10 contiguous to and surrounded by lots with existing struc-
11 tures constructed below the regulatory flood elevation.

12
13 L. Obstruction - structure, object or other matter in, along,
14 across, or projecting into any channel, water course or
15 flood plain river or stream, or flood hazard area which
16 may impede, retard, or change the direction of the flow
17 of water.

18
19 M. Regulatory Flood - a flood having a peak discharge which
20 can be expected to be equalled or exceeded on the average
21 of once in a 100-year period, as calculated by a method
22 and procedure which is acceptable to and provided by the
23 Indiana Department of Natural Resources. The regulatory
24 flood has a 1 percent probability of occurring in any given
25 year.

26
27 N. Regulatory Flood Profile - a longitudinal profile along
28 the thread of a stream showing the maximum water surface
29 elevations attained by the regulatory flood.

30
31 O. Regulatory Floodway - the channel of a river or stream
32

1 and those portions of the flood plain adjoining the channel
2 which are reasonably required to efficiently carry and
3 discharge the peak flow of the regulatory flood of any
4 channel or watercourse.

5
6 P. River or Stream - all open channels, whether natural, man-made,
7 or modified by man, which carry or discharge water.

8
9 Q. Structure - walled and roofed buildings, including gas
10 or liquid storage tanks, and mobile homes that are princi-
11 pally above ground.

12 13 14 **Section 33-43. FLOOD PLAIN DISTRICT BOUNDARIES**

15
16 The areal extent of the flood plain area shall include all land
17 subject to inundation by the regulatory flood as shown on maps
18 prepared by the Federal Emergency Management Agency in a scien-
19 tific and engineering report entitled "The Flood Insurance Study
20 for the City of Fort Wayne, Indiana" dated April 3, 1985, with
21 accompanying Flood Boundary-Floodway Maps along with any subse-
22 quent revisions to text or maps. In cases where the floodway,
23 floodway fringe, peak discharge and regulatory profile have
24 not been provided by the Federal Emergency Management Agency,
25 this data shall be determined and approved by the Indiana Department
26 of Natural Resources utilizing the best available technology.
27 In addition to the Flood Insurance Study Maps, any maps prepared
28 or supplied by the Department of Natural Resources which allow
29 for a better flood plain delineation shall be used by the Zoning
30 Enforcement Officer provided that these maps shall be at least
31 as restrictive as the FIS maps. Amendments to the text of Flood

1 Plain District and FIS maps can be made provided that no change
2 will be made in the delineation of flood plain, floodway, or
3 regulatory flood elevation and the text of Flood Plain District
4 without the prior approval of FEMA.
5
6
7

8 **Section 33-44 PROCEDURES FOR DEVELOPMENT IN FLOOD PLAIN**
9 **DISTRICTS**
10

11 A. No development in the Flood Plain Districts shall take
12 place unless the Zoning Enforcement Officer first grants
13 an Improvement Location Permit. The Zoning Enforcement
14 Officer shall review all applications for Improvement Location
15 Permits for development including new construction, addi-
16 tions to existing construction, or other development to
17 ascertain whether the proposed development lies in the
18 Flood Plain District. If the Permit Application pertains
19 to property in the Flood Plain District, then the applicant
20 must meet the following criteria before receiving an Improvement
21 Location Permit and Certificate of Occupancy.
22

23 B. In the enforcement of this article and in granting permits
24 and certificates, the Division of Community Development
25 and Planning shall assure that all of the standards con-
26 tained in 44 CFR, Section 60.3 Subsection (d) and Indiana
27 Department of Natural Resources requirements pertaining
28 to state and federal permits, building permit review, sub-
29 division review, flood-proofing nonresidential structures,
30 mobile home tie down standards, utility construction, record
31 keeping (including lowest floor elevation) and stream and
32

1 river alteration and maintenance have been met.

2
3 1. Record Keeping - For every permit issued in the flood
4 plain, record shall be kept of the 100-year flood elevation
5 at that location, and the elevation of the lowest
6 floor of the structure as designed and built.

7
8 2. Record Keeping for Nonresidential Building - The developer
9 shall provide as part of an application for an Improvement
10 Location Permit a certificate from a registered profes-
11 sional engineer or architect who shall certify that
12 the flood-proofing methods are adequate to withstand
13 the flood depths, pressures, velocities, impact and
14 uplift forces and other factors associated with the
15 regulatory flood. A record of such certificates indicating
16 the specific elevation (in relation to mean sea level)
17 to which such structures are flood-proofed shall be
18 maintained with the Division of Community Develop-
19 ment and Planning.

20
21 C. Procedures for development within the floodway

22
23 1. There will be no development of any kind that will
24 increase the regulatory flood elevation including
25 any structure, fill, deposit or obstruction within
26 those portions of the floodway which are currently
27 undeveloped, except necessary public utilities, construc-
28 tion for flood control purposes, and for the use of
29 parks, open spaces, and public recreation.

30
31 2. If an application for an Improvement Location Permit

lies in an identified floodway, then the Zoning Enforcement Officer shall deny the permit, except that applications for parks, open spaces, public recreation, necessary public utilities, devices for flood control purposes, enlargement, expansion or alteration or nonconforming use and rebuilding of any structure damaged by flood, fire, explosion, act of God, or the public enemy shall be forwarded to the Board of Zoning Appeals for a variance in accordance with the procedures set forth in Sections 33-45 and 33-46.

3. Expansions of legal nonconforming uses shall be permitted only as provided in Section 33-45.

4. No new structures and enlargements or expansion of legal nonconforming use shall be permitted within the floodway areas.

D. Procedures for development within the floodway fringe:

1. For residential structures the lowest floor including the basement must be at least two (2) feet above the regulatory flood elevation.

2. For nonresidential structures the lowest floor including the basement must be at least two (2) feet above the regulatory flood elevation or adequate flood-proofing techniques must be used to that elevation.

3. All structures to be erected or expanded in the floodway fringe shall have a low flooddamage potential.

1 4. The structure or structures, if permitted, shall be
2 constructed and placed on the building site so as
3 to offer the minimum obstruction to the flow of flood-
4 waters.

5 (i) Whenever possible, structures shall be constructed
6 with the longitudinal axis parallel to the direction
7 of the flow of floodwaters.
8

9 (ii) So far as practicable, structures shall be placed
10 approximately on the same flood flow lines as
11 those of adjoining structures.
12

13 5. Structures shall be firmly anchored to prevent flota-
14 tion which may result in damage to other structures,
15 restriction of bridge openings, and blockage of other
16 narrow sections of the stream or river.
17

18 6. Utility equipment such as electrical and heating equipment
19 shall be constructed at least two (2) feet above the
20 regulatory flood elevation for the particular area,
21 unless the building is flood-proofed.
22

23
24 E. Storage of material and equipment in the Floodway Fringe
25 shall be governed by the following:
26

27 1. The storing or processing of materials that are in
28 time of flooding buoyant, flammable, explosive, or
29 could be injurious to human, animal, or plant life
30 is prohibited.
31

2. Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation.

F. Fill: Fill will be permitted only in the floodway fringe areas and only in accordance with the following procedures:

1. For any fill proposed to be deposited in the floodway fringe, it must be shown that the advantages outweigh the detriment caused by the fill and to be of some beneficial purpose. The amount of the fill shall not be greater than is shown on a plan submitted by the owner showing the uses to which the filled land will be put and the final dimensions of the proposed fill. All fill placed within the floodway and floodway fringe shall be obtained from other areas within the flood plain. The location within the flood plain from which the fill is taken shall be graded and seeded to prevent erosion and sedimentation.

2. Such fill or other material shall be protected against erosion by riprap, vegetation cover, or bulkheading.

G. The Director of the Division of Community Department and Planning or his/her representative, may attach such conditions in the granting of Improvement Location Permits and Certificate of Occupancy Permits as it deems necessary to further the purpose of this article. Any decision of the Director of the Division of Community Development and Planning or his/her representative, may be appealed to

1 the Board of Zoning Appeals.

2
3
4 **Section 33-45 NONCONFORMING USES.**

5
6 A. All land uses existing at the time of adoption of this
7 article in flood plain areas not in full compliance with
8 this article shall be considered nonconforming uses.

9
10 B. Except for normal repair and maintenance, there shall be
11 no enlargement or expansion of a building which constitutes
12 a legal nonconforming use within the floodway area.

13
14 C. Except for normal repair and maintenance, any structure
15 which constitutes a legal nonconforming use within the
16 floodway fringe may be altered, enlarged, or extended,
17 on a one-time basis at the existing grade and floor elevations
18 provided that other requirements of Section 33-44 are met,
19 and such alterations, enlargements or extensions do not
20 increase the value of the structure, excluding the value
21 of the land, by more than forty percent (40%) of its pre-im-
22 provement market value. If the enlargement, extension or
23 alteration is greater than 40% of its pre-improvement market
24 value, it is permitted as long as the alterations, enlarge-
25 ments or extensions are in conformance with this article
26 and are not otherwise prohibited or restricted by Federal
27 or State law or regulations or ordinance and local regula-
28 tions.

29
30 D. Any structure which constitutes a legal nonconforming use
31 which is damaged by flood, fire, explosion, act of God,

1 the public enemy, other disaster or accident, may be restored
2 to its original dimensions and condition at the existing
3 grade and flood elevations, provided the damage has not
4 reduced the value of the building, excluding the value
5 of the land, by more than forty percent (40%) of its pre-damaged
6 market value. If the structure is damaged more than forty
7 percent (40%) of its pre-damaged market value, then the
8 structure can be reconstructed or repaired only if permanently
9 changed to a conforming use as to the grade and floor elevations
10 and other requirements in accordance with the procedures
11 for development in Section 33-44.

- 12
13
14 E. Any repairs, alterations, enlargements, or extensions of
15 any existing legal nonconforming use which use does not
16 involve a structure, is subject to the provisions of this
17 article.

18
19 **Section 33-46. VARIANCES**

- 20
21 A. If this article prohibits a proposed development in a flood
22 plain area, a person seeking such use or development may
23 apply to the Board of Zoning Appeals for a variance from
24 the provisions of this article, except for a new development
25 and expansion or enlargement of legal nonconforming use
26 in the floodway. Prior to the Board of Zoning Appeals
27 consideration of the variance request for a variance in
28 the floodway, the application for the variance shall be
29 forwarded to the Indiana Department of Natural Resources
30 for review and comment. All terms and conditions imposed
31 or recommended by the Indiana Department of Natural Resources

1 shall be incorporated into the issuance of any variance
2 and subsequent permit.

3
4 B. In determining whether to grant a variance, the Board of
5 Zoning Appeals shall consider the following matters along
6 with the other provisions of this article:

7
8 1. The danger to life and property due to increased flood
9 heights or velocities caused by encroachments.

10
11 2. The danger that materials may be swept on to other
12 lands or downstream to the injury of others.

13
14 3. The proposed water supply and sanitation systems and
15 the ability of these systems to prevent disease, contamina-
16 tion and unsanitary conditions as affected by the
17 variance.

18
19 4. The susceptibility of the proposed facility and its
20 contents to flood damage and the effect of such damage
21 on the individual owners.

22
23 5. The importance of the services provided by the proposed
24 facility to the community.

25
26 6. The requirements of the facility for a waterfront
27 location.

28
29 7. The availability of alternative locations not subject
30 to flood for the proposed use.

1. In all cases a public hearing will be held as provided in Chapter 33 with required statutory notice provided.
2. In an in-fill situation, the structure or use is located on a lot one-half acre or less in size and is contiguous to and surrounded by lots with existing structures constructed below the regulatory flood elevation.
3. The variance must not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this article will result in unnecessary hardship including extreme hardship to the property owner, and so that the spirit of this article shall be observed and substantial justice done.
4. All possible efforts are made to minimize potential flood damages.
5. The variance must be designed so as to cause the least amount of potential damage considering the factors set forth in Section 33.46B.
6. The Board will require in each case a written waiver of liability (as more fully set forth in Section 33-47) from the owners and developers if the developers are different from the owners.
7. If the proposed development is in Floodway, it must be shown that this will not result in an increased flood elevation.

1 D. If the Board grants a variance according to the above,
2 it must give notice to the applicant. This written notice
3 shall include:

4
5 1. The fact that the proposed structure will be located
6 in a flood plain area.

7
8 2. The 100-year flood elevation and the number of feet
9 that the lowest floor of the proposed structure will
10 be below the 100-year flood level.

11
12 3. The fact that the flood insurance rates will be greatly
13 increased commensurate with the distance below the
14 100-year flood level.

15
16 This notice shall be attached to the building permit and must
17 be displayed with it.

18
19
20 **Section 33-47 WARNING AND DISCLAIMER OF LIABILITY**

21
22 The degree of flood protection required by this article is considered
23 reasonable for regulatory purposes and is based on engineering
24 and scientific consideration. Larger floods can and will occur
25 on rare occasions. Flood heights may be increased by man-made
26 or natural causes, such as ice or debris jams. This article
27 does not imply that areas outside the Flood Plain District as
28 defined herein, will be free from flooding or flood damages.
29 This article does not create liability on the part of the State
30 of Indiana, the Indiana Department of Natural Resources, the
31 Board of Zoning Appeals, the Plan Commission of the City of

1 Fort Wayne, or any elected or appointed official or employee
2 thereof for any flood damages that result from reliance on this
3 article or any administrative decision lawfully made thereunder. No
4 Improvement Location Permit nor Certificate of Occupancy shall
5 be granted for any development or any other kind of work in
6 an area covered by this article unless the applicant first executes
7 a document upon forms provided by the City holding the City
8 and State harmless and waiving the City's and State's liability
9 for any flood damage.

10
11 **Section 33-48. ENFORCEMENT**

- 12
13 A. It shall be the duty of the Zoning Enforcement Officer
14 to enforce the provisions of this article in accordance
15 with the powers provided by this article, all other provisions
16 of this article, and in accordance with the laws of the
17 State of Indiana.
18
19 B. All departments, officials and employees of the City which
20 are vested with the duty of authority to issue permits
21 or licenses shall conform to the provisions of this article
22 and shall issue no permit or license for any use, building
23 or purpose if the same would be in conflict with the provisions
24 of this article.
25

26
27 **Section 33-49. PENALTIES**

- 28
29 A. Any person, whether as principal, agent, owner, lessee,
30 tenant, contractor, builder, architect, engineer or other-
31

1 wise who violates any provision of this article shall be
2 guilty of a misdemeanor and upon conviction shall be punished
3 by a fine of not less than ten dollars nor more than three
4 hundred dollars for each offense. Each day of the existence
5 of any violation of this article shall be a separate offense.
6

7 B. The erection, construction, enlargement, conversion, moving
8 or maintenance of any building or structure and the use
9 of any land contrary to the provisions of this article
10 is hereby declared to be a nuisance and in violation of
11 this article and unlawful. The Plan Commission, by its
12 Zoning Enforcement Officer, may institute a suit for injunction
13 in the Circuit Court or any Superior Court of the County
14 to restrain any person or governmental unit from violating
15 any provision of this article and to cause such violation
16 to be prevented, abated or removed. Such action may also
17 be instituted by any property owner who is or may be damaged
18 by the violation of any provision of this article.
19

20 C. The remedies provided for in this section shall be cumu-
21 lative and not exclusive and shall be addition to any other
22 remedies provided by law.
23
24
25
26
27
28
29
30
31
32

Section 33-50. SEVERABILITY

If any section, clause, provision, or portion of this Article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Article shall not be affected thereby.



COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:



BRUCE O. BOXBERGER, CITY ATTORNEY

FEB 22 REC'D

Bill No. G-85-

03-01

*Voided because
of changes
2/22*

GENERAL ORDINANCE NO. _____

AN ORDINANCE amending Chapter 33 of the
Municipal Code of the City of Fort Wayne,
Indiana.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
INDIANA:

SECTION 1. That this Ordinance shall replace in its entirety
Article X - FLOOD PLAIN DISTRICT - Section 33-41 - GENERAL CRITERIA FOR
FLOOD PLAIN REGULATIONS with the following:

ARTICLE X - FLOOD PLAIN DISTRICT

Section 33-41. GENERAL CRITERIA FOR FLOOD PLAIN REGULATIONS

- A. Objectives - The objective of this article is to provide sound
flood plain regulation for Fort Wayne's rivers and streams in
order better to:
1. Protect human life and health.
 2. Protect individuals from buying lands and structures which
are unsuited for intended purposes because of flood hazards.
 3. Provide for public awareness of the flooding potential.
 4. Minimize public and private property damage.
 5. Minimize surface and ground-water pollution which will affect
human, animal, or plant life.

- 1 6. Control flood-plain uses such as fill, dumping, storage of
2 material, structures, buildings, and any other which acting
3 alone or in combination with other existing or future uses
4 might cause damaging flood heights and velocities by ob-
5 structing flows and reducing water storage capacity.
6
- 7 7. Control development which will, when acting alone or in
8 combination with other development or features, create an
9 unjustified vulnerability to floods, flood damage, and an
10 additional burden to the public to pay the costs of rescue,
11 relief, emergency preparedness measures, sandbagging,
12 pumping, and temporary dikes or levees.
13
- 14 8. Control development which will when acting alone or in
15 combination with other development or features, create an
16 additional burden to the public for business interruptions,
17 factory closing, disruption of transportation routes,
18 interference with utility services, and other factors that
19 result in loss of wages, sales, production, and tax write-
20 offs.
21
- 22 9. Help maintain a stable tax base by the preservation or
23 enhancement of property values for future floodplain develop-
24 ment.
25
- 26 10. Minimize areas of the flood plain that are blighted by floods
27 so that property values in and adjacent to the flood plain
28 will be preserved.
29
- 30 11. Maximize the use of flood plain for parks, open spaces, and
31 public recreation purposes.
32

Section 33-42. **DEFINITIONS**

Whenever used or referred to in this ordinance unless a different meaning appears from the context.

- A. Development - any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.
- B. Flood or Flood Water - the water of any river, stream or lake which is above the bank and/or outside the channel and banks of such river, stream, or lake.
- C. Flood Plain - the area adjoining a river, stream, or lake which has been or may hereafter be covered by flood water and consists of all floodway, floodway fringe unprotected, and floodway fringe protected areas that are subject to flooding by the regulatory flood. This area is shown as unnumbered A-Zones on the Federal Insurance Rate Maps.
- D. Flood-Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flood primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures, and contents of buildings in a flood plain.
- E. Flood-Proofed Building - a commercial or industrial building designed to exclude flood water from the interior of that building. All such flood proofing shall be adequate to withstand the

1 flood depths, pressures, velocities, impact and uplift forces and
2 other factors associated with the regulatory flood.
3

4 F. Flood Protection Grade - (i) non-flood proofed buildings: the
5 elevation of the lowest floor of a building or structure. If a
6 building contains a basement, the basement floor is considered the
7 lowest floor. (ii) flood proofed building: If a building is
8 floodproofed as hereinafter defined, the term "flood protection
9 grade" applies to the water surface elevation for which the
10 building is protected.
11

12 G. Floodway Area (FW) - The channel of a river or stream and those
13 portions of the floodplain adjoining the channel that are deter-
14 mined by the Indiana Department of Natural Resources and FEMA as
15 necessary to carry and discharge the regulatory flood of any
16 channel, water course or floodplain.
17

18 H. Floodway Fringe (FF) - means those portions of the flood plain
19 lying outside the floodway area.
20

21 I. Floodway Fringe Unprotected Area (FFU) - That portion of the
22 floodplain lying outside of the floodway which is not included in
23 the Floodway Fringe Protected Area.
24

25 J. Floodway Fringe Protected Area (FFP) - That portion of the
26 floodplain lying outside of the floodway and determined by the
27

1 City Department charged with flood water control to be reasonably
2 protected from flood-waters so that the chances of flooding are
3 minimized. The Floodway Fringe Protected areas shall be approved
4 by the Indiana Department of Natural Resources and will be shown
5 on an overlay district map maintained by the City.
6

7 K. In-fill - new construction or substantial improvements to be
8 erected on a lot of one-half acre or less in size contiguous to
9 and surrounded by lots with existing structures constructed below
10 the regulatory flood elevation.
11

12 L. Obstruction - structure object or other matter in, along, across,
13 or projecting into any channel, water course or floodplain river
14 or stream, or flood-hazard area which may impede, retard, or
15 change the direction of the flow of water.
16

17 M. Regulatory Flood - a flood having a peak discharge which can be
18 expected to be equaled or exceeded on the average of once in a one
19 hundred year period, as calculated by a method and procedure which
20 is acceptable to and provided by the Indiana Department of Natural
21 Resources. The regulatory flood has a one percent probability of
22 occurring in any given year.
23

24 N. Regulatory Flood Profile - a longitudinal profile along the thread
25 of a stream showing the maximum water surface elevations attained
26 by the regulatory flood.
27

1
2
3 O. Regulatory Floodway - the channel of a river or stream and those
4 portions of the flood plain adjoining the channel which are
5 reasonably required to efficiently carry and discharge the peak
6 flow of the regulatory flood of any channel or water course.

7
8 P. River or Stream - all open channels, whether natural, man-made, or
9 modified by man, which carry or discharge water.

10
11 Q. Structure - a walled and roofed buildings, including gas or
12 liquid storage tanks, that are principally above ground, and
13 including mobile homes.

14
15 Section 33-43. **FLOOD PLAIN DISTRICT BOUNDARIES**

16
17 The areal extent of the flood plain area shall include all land subject
18 to inundation by the regulatory flood as shown on maps prepared by the
19 Federal Emergency Management Agency in a scientific and engineering
20 report entitled "The Flood Insurance Study for the City of Fort Wayne,
21 Indiana" dated April 3, 1985, with accompanying Flood Boundary-Floodway
22 Maps along with any subsequent revisions to text or maps. In cases where
23 the floodway, floodway fringe, peak discharge, and regulatory profile
24 have not been provided by the Federal Emergency Management Agency, this
25 data shall be determined and approved by the Indiana Department of
26 Natural Resources utilizing the best available technology. In addition to
27 the Flood Insurance Study Maps any maps prepared or supplied by the

1 Department of Natural Resources which allow for a better flood plain
2 delineation shall be used by the Zoning Enforcement Officer provided that
3 these maps shall be at least as restrictive as the FIS maps. No change
4 will be made in the delineation of flood plain, flood way, or regulatory
5 flood elevation without the prior approval of FEMA.
6
7

8 Section 33-44 **PROCEDURES FOR DEVELOPMENT IN FLOOD PLAIN**
9 **DISTRICTS**
10

11 A. Use Permits. No development in the Flood plain Districts shall
12 take place unless the Zoning Enforcement Officer first grants an
13 Improvement Location Permit. The Zoning Enforcement Officer shall
14 review all applications for improvement location permits for
15 development including new construction, additions to existing
16 construction, or other development to ascertain whether the
17 proposed development lies in the Flood Plain District. If the
18 Permit Application pertains to property in the Flood Plain
19 District then the applicant must meet the following criteria
20 before receiving an Improvement Location Permit and Certifi-
21 cate of Occupancy.
22

23 B. In the enforcement of this article and in granting permits and
24 certificates the Division of Community Development and Planning
25 shall assure that all of the standards contained in 44 CFR,
26 Section 60.3 Subsection (d) and Indiana Department of Natural
27

1 Resources requirements pertaining to state and federal permits,
2 building permit review, subdivision review, flood proofing
3 non-residential structures, mobile home tie down standards,
4 utility construction, recordkeeping (including lowest floor
5 elevation) and stream and river alteration and maintenance have
6 been met.

7
8 1. Record Keeping - For every permit issued in the flood plain,
9 record shall be kept of the 100 year flood elevation at that
10 location, and the elevation of the lowest floor of the
11 structure as designed and built.

12
13 2. Record Keeping for Non-Residential Building - The developer
14 shall provide as part of an application for an improvement
15 location permit a certificate from a registered professional
16 engineer or an architect who shall certify that the flood-
17 proofing methods are adequate to withstand the flood depths,
18 pressures, velocities, impact and uplift forces and other
19 factors associated with the regulatory flood. A record of
20 such certificates indicating the specific elevation (in
21 relation to mean sea level) to which such structures are
22 floodproofed shall be maintained with the Division of
23 Community Development and Planning.

24
25 C. Procedures for development within floodway

26
27 1. There shall be no development of any kind including any

structure, fill, deposit or obstruction within those portions of the floodway which are currently undeveloped, except necessary public utilities, construction for flood control purposes, and for the use of parks, open spaces, and public recreation.

2. If an application for an improvement location permit lies in an identified floodway, then the Zoning Enforcement Officer shall deny the permit except that applications for parks, open spaces, public recreation necessary public utilities constructed for flood control purposes shall be forwarded to the Board of Zoning Appeals for a variance in accordance with the procedures set forth in Section 33-46.

3. Expansions of legal nonconforming uses shall be permitted only as provided in Section 33-45.

D. Structures within the floodway fringe:

1. For residential structures the lowest floor including the basement must be at least 2 feet above the regulatory flood elevation.
2. For non-residential structures, the lowest floor including the basement be at least 2 feet above the regulatory flood elevation or adequate floodproofing techniques must be used to that elevation.

1
2 3. All structures to be erected or expanded in the floodway
3 fringe shall have a low flood-damage potential.
4

5 4. The structure or structures, if permitted, shall be con-
6 structed and placed on the building site so as to offer the
7 minimum obstruction to the flow of floodwaters.
8

9 (i) Whenever possible, structures shall be constructed with the
10 longitudinal axis parallel to the direction of the flow of
11 flood waters.
12

13 (ii) So far as practicable, structures shall be placed approx-
14 imately on the same flood flow lines as those of adjoining
15 structures.
16

17 5. Structures shall be firmly anchored to prevent flotation
18 which may result in damage to other structures, restriction
19 of bridge openings, and blockage of other narrow sections of
20 the stream or river.
21

22 6. Utility equipment such as electrical and heating equipment
23 shall be constructed at least two feet above the regulatory
24 flood elevation for the particular area, unless the building
25 is flood proofed.
26

27 E. Storage of material and equipment in the Floodway Fringe shall be
28
29
30
31
32

governed by the following:

1. The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation.

F. Fill: Fill will be permitted only in the floodway fringe areas and only in accordance with the following procedures:

1. For any fill proposed to be deposited in the floodway fringe it must be shown that the advantages outweigh the detriment caused by the fill. to be of some beneficial purpose. The amount of the fill shall not be greater than is shown on a plan submitted by the owner showing the uses to which the filled land will be put and the final dimensions of the proposed fill. All fill placed within the floodway fringe shall be obtained from other areas within the floodplain. The location within the floodplain from which the fill is taken shall be graded and seeded to prevent erosion and sedimentation.
2. Such fill or other material shall be protected against erosion by riprap, vegetation cover, or bulkheading.

1 G. The Director of the Division of Community Department and Planning
2 or his/her representative, may attach such conditions in the
3 granting of Improvement Location Permits and Certificate of
4 Occupancy Permits as it deems necessary to further the purpose of
5 this article. Any decision of the Director of the Division of
6 Community Development and Planning or his/her representative, may
7 be appealed to the Board of Zoning Appeals.
8

9 Section 33-45 **NONCONFORMING USES.**
10

11 A. All land uses existing at the time of adoption of this article in
12 floodplain areas not in full compliance with this article shall be
13 considered non-conforming uses.

14 B. Except for normal repair and maintenance, an application for any
15 proposed alteration or expansion of a building which constitutes a
16 legal nonconforming use within the floodway or floodway fringe
17 areas must first be forwarded to the Department of Natural
18 Resources for review and comment. If the Department of Natural
19 Resources does not recommend against the development, and all the
20 provisions of Sections 33-44 and 33-45 and other provisions of
21 this article are met, the Zoning Enforcement Officer may grant an
22 Improvement Location Permit and place conditions and requirements
23 as necessary. In granting such permit, all conditions recommended
24 by the Indiana Department of Natural Resources shall be included
25 in issuance of permit.
26
27
28
29
30
31
32

1 C. Except for normal repair and maintenance, any structure which
2 constitutes a legal nonconforming use within the floodway fringe
3 may be altered, enlarged, or extended, on a one time basis
4 provided that the requirements of Section 33-44 are met, and the
5 Department of Natural Resources has granted its consent and such
6 alterations, enlargements, or extensions do not increase the value
7 of the structure, excluding the value of the land, by more than
8 forty percent (40%) of its pre-improvement market value, and as
9 long as the alterations, repairs, enlargements, or extensions are
10 in conformance with this article and are not otherwise prohibited
11 or restricted by Federal or state law or regulations or by
12 ordinance and local regulations.

13
14 D. Any structure which constitutes a legal nonconforming use which is
15 damaged by flood, fire, explosion, act of God, or the public
16 enemy, may be restored to its original dimensions and condition,
17 provided the damage has not reduced the value of the building,
18 excluding the value of the land by more than forty percent (40%)
19 of its pre-damaged market value.

20
21 E. Any repair, alteration, enlargements, or extensions of any
22 existing legal nonconforming use which use does not involve a
23 structure, is subject to the provisions of this article.
24
25
26

Section 33-46. **VARIANCES**

A. If this article prohibits a proposed development in a flood plain area, a person seeking such use or development may apply to the Board of Zoning Appeals for a variance from the provisions of this article. Prior to the Board of Zoning Appeals consideration of the variance request, the application for the variance shall be forwarded to the Indiana Department of Natural Resources for review and comment. All terms and conditions imposed or recommended by the Indiana Department of Natural Resources shall be incorporated into the issuance of any variance and subsequent permit.

B. In determining whether to grant a variance the Board of Zoning Appeals shall consider the following matters along with the other provisions of this article.

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
2. The danger that materials may be swept on to other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions as affected by the variance.

4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flood for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the Comprehensive Plan and flood-plain management program for the area.
10. The safety of access to the property in time of flood for ordinary and emergency vehicles.
11. The projected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
12. The structure on which reconstruction, rehabilitation or

1 restoration is proposed is listed on the National Register of
2 Historic Places, or State, or Local Inventory of Historic
3 Places.

4
5 13. The subject property is located in the Floodway Fringe
6 Protected Area.

7
8 14. That the proposed project is infill development.

9
10 15. That the proposed project is for reconstruction and addition
11 to an existing structure.

12
13 16. If the proposed project is in Floodway it must be shown that
14 this will not result in an increased flood elevation.

15
16 C. The Board of Zoning Appeals may grant such variances only where
17 the following conditions are met:

18
19 1. In all cases a public hearing will be held as provided in
20 Chapter 33 with required statutory notice provided.

21
22 2. In an in-fill situation, the structure or use is located on a
23 lot one-half acre or less in size and is contiguous to and
24 surrounded by lots with existing structures constructed below
25 the regulatory flood elevation.

3. The variance must not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this article will result in unnecessary hardship including extreme hardship to the property owner, and so that the spirit of this article shall be observed and substantial justice done.

4. All possible efforts are made to minimize potential flood damages.

5. The variance must be designed so as to cause the least amount of potential damage considering the factors set forth in Section 33.46 B.

6. The Board will require in each case a written waiver of liability (as more fully set forth in Section 33-47) from the owners and developers if the developers are different from the owners.

D. If the Board grants a variance according to the above, it must give written notice to the applicant. This written notice shall include:

1. The fact that the proposed structure will be located in a flood plain area.

2. The 100 year flood elevation and the number of feet that the lowest floor of the proposed structure will be below the

100-year flood level.

3. The fact that the flood insurance rates will be greatly increased commensurate with the distance below the 100-year flood level.

This notice shall be attached to the building permit and must be displayed with it.

Section 33-47 **WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice or debris jams. This article does not imply that areas outside the flood plain district as defined herein, will be free from flooding or flood damages. This article does not create liability on the part of the State of Indiana, the Indiana Department of Natural Resources, the Board of Zoning Appeals, the Plan Commission of the City of Fort Wayne, or any elected or appointed official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder. No Improvement Location Permit nor Certificate of Occupancy shall be granted for any development or any other kind of work in an area covered by this article unless the applicant first executes a document upon forms provided by the city holding the City and State harmless and waiving the City's and State's liability for any flood damage.

Section 33-48. **ENFORCEMENT**

- A. It shall be the duty of the Zoning Enforcement Officer to enforce the provisions of this chapter in accordance with the powers provided by this chapter, all other provisions of this Code, and in accordance with the laws of the State of Indiana.
- B. All departments, officials and employees of the city which are vested with the duty of authority to issue permits or licenses shall conform to the provisions of this chapter and shall issue no permit or license for any use, building or purpose if the same would be in conflict with the provisions of this chapter.

Section 33-49. **PENALTIES**

- A. Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise who violates any provision of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars nor more than three hundred dollars for each offense. Each day of the existence of any violation of this article shall be a separate offense.
- B. The erection, construction, enlargement, conversion, moving or maintenance of any building or structure and the use of any land contrary to the provisions of this article is hereby declared to be a nuisance and in violation of this article and unlawful. The

1 Plan Commission by its Zoning Enforcement Officer may institute a
2 suit for injunction in the Circuit Court or any Superior Court of
3 the County to restrain any person or governmental unit from
4 violating any provision of this article and to cause such vio-
5 lation to be prevented, abated or removed. Such action may also
6 be instituted by any property owner who is or may be damaged by
7 the violation of any provision of this article.
8

9 C. The remedies provided for in this section shall be cumulative and
10 not exclusive and shall be addition to any other remedies provided
11 by law.
12
13

14 Section 33-50. SEVERABILITY

15

16 If any section, clause, provision, or portion of this Article is adjudged
17 unconstitutional or invalid by a court of competent jurisdiction, the
18 remainder of this Article shall not be effected thereby.
19

20 Section 2. That this Ordinance shall be in full force and effect from
21 and after its passage by the Mayor.
22

23 _____
24 COUNCILMEMBER

25 APPROVED AS TO FORM AND LEGALITY:
26

27 _____
28 BRUCE O. BOXBERGER, CITY ATTORNEY
29

ORIGINAL

DIGEST SHEET

Admn. Appr. _____

ORIGINAL

TITLE OF ORDINANCE Flood Plain Ordinance

DEPARTMENT REQUESTING ORDINANCE Division of Community Development & Planning

SYNOPSIS OF ORDINANCE Ordinance will regulate development in the flood plain
to reduce future structural encroachments.

EFFECT OF PASSAGE Fort Wayne will move from emergency to regular flood insurance
program.

EFFECT OF NON-PASSAGE City will be suspended from flood insurance program.

MONEY INVOLVED (Direct Costs, Expenditures, Savings) _____

(ASSIGN TO COMMITTEE (J.N.) _____

BILL NO. G-85-04-01

REPORT OF THE COMMITTEE ON REGULATIONS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) amending Chapter 33 of the
Municipal Code of the City of Fort Wayne, Indiana (Flood Plain Ordinance)

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION AND BEG
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)
(RESOLUTION) DO PASS

YES

NO

Charles B. Redd
CHARLES B. REDD
CHAIRMAN

Janet G. Bradbury
JANET G. BRADBURY
VICE CHAIRWOMAN

James S. Stier
JAMES S. STIER

Ben A. Eisbart
BEN A. EISBART

Donald J. Schmidt
DONALD J. SCHMIDT

CONCURRED IN _____

SANDRA E. KENNEDY
CITY CLERK

BILL NO. G-85-03-01

REPORT OF THE COMMITTEE ON REGULATIONS

WE, YOUR COMMITTEE ON REGULATIONS TO WHOM WAS
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) amending Chapter 33 of the
Municipal Code of the City of Fort Wayne, Indiana (Flood Plain Ordinance)

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION AND BEG
LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID (ORDINANCE)

~~XX(RESOLUTION)~~

NO RECOMMENDATION

YES

NO

Charles B. Redd

CHARLES B. REDD
CHAIRMAN

Janet G. Bradbury

JANET G. BRADBURY
VICE CHAIRWOMAN

James S. Stier

JAMES S. STIER

Ben A. Eisbart

BEN A. EISBART

Donald J. Schmidt

DONALD J. SCHMIDT

CONCURRED IN _____

SANDRA E. KENNEDY
CITY CLERK